

The Honorable Mary K. Dimke

Brian C. Augenthaler, WSBA #44022
Keating, Bucklin & McCormack, Inc., P.S.
801 Second Ave., Suite 1210
Seattle, WA 98104
(206) 623-8861

UNITED STATES DISTRICT COURT
EASTERN OF WASHINGTON
AT SPOKANE

The Estate of ROBERT BRADLEY,
deceased; KESHIA HAHN, as
Personal Representative of the Estate;
R.Par.B., minor child of ROBERT
BRADLEY, deceased, by and through
his legal guardian, KESHIA HAHN;
AND R.Pat.B., minor child of
ROBERT BRADLEY, deceased, by
and through his legal guardian,
KESHIA HAHN,

Plaintiffs,

v.

CITY OF SPOKANE, a political
subdivision of the State of
Washington; TREVOR WALKER,
individually and in his official
capacity; CHRISTOPHER
JOHNSON, individually and in his
official capacity; AND JOHN and
JANE DOES 1-40, individually and
in their official capacities, inclusive,

Defendants.

No. 2:24-cv-00189-MKD

DEFENDANT CITY OF
SPOKANE'S REPLY TO
PLAINTIFFS' OPPOSITION TO
DEFENDANT'S MOTION TO
RELEASE VAN TO OWNER

NOTED FOR: October 11, 2024

HEARING DATE: December 3,
2024, at 9:00 a.m.

DEFENDANT CITY OF SPOKANE'S REPLY TO
PLAINTIFFS' OPPOSITION TO DEFENDANT'S
MOTION TO RELEASE VAN TO OWNER - 1
2:24-cv-00189-MKD

1053-00014/711558

KEATING, BUCKLIN & MCCORMACK, INC., P.S.

ATTORNEYS AT LAW
801 SECOND AVENUE, SUITE 1210
SEATTLE, WASHINGTON 98104-1518
PHONE: (206) 623-8861
FAX: (206) 223-9423

1 It appears there are three available options for the disposition of the van:

- 2 1. Plaintiffs (or their counsel) can buy the van from its owner, Gesa Credit
3 Union, and they can use it or preserve it as they deem fit;
4
5 2. Plaintiffs and their experts can inspect the van again between now and
6 the time the Court rules on this Motion (no further inspections has been
7 requested since this Motion was filed)¹;
8
9 3. The Court can deny this Motion, and the van will continue to depreciate
10 and cause logistical problems for Kevin Berry and evidence technicians
11 at the Property Evidence Facility, all the way through trial in November
12 2025.

13 Assuming Plaintiffs are not interested in purchasing the van or lack the
14 funds to do that, the City respectfully requests the Court consider some
15 version of Option No. 2 as a possible compromise. The Court could establish
16 deadline for any further inspections so that the van can be released to Gesa by
17 a date certain, preferably long before the November 2025 trial date, at which
18 point the van will be over four years old, having sat undriven for well over
19

20 _____
21 ¹ Neither by Plaintiffs in this lawsuit, or by the Plaintiff in in the McLaughlin
22 matter (No. 2:23-CV-00286-MKD), whose counsel was provided a copy of the
City's Motion.

half its existence.

Of Plaintiffs' Response arguments, the most persuasive is that this Motion should be denied so the jury can view the van at trial. Option No. 1 could serve this end (buying it from Gesa). Option No. 3 would also serve this purpose, but it would rely on the Court authorizing a viewing of the van at trial, over the City's objection. This would take the better part of a full trial day and would require the Court to arrange transportation for the jury and the Court (including the court reporter).² The potential for a viewing does not outweigh Gesa's ownership rights nor the operational concerns expressed by Mr. Berry, especially when the van will be presented to the jury in photographic and 3D forms.

The van has outlived its useful evidentiary life. The Court can preserve its remaining value to its current and future owners by granting this Motion and/or by setting a deadline for further inspection of the van (potentially including Ms. McLaughlin in No. 2:24-CV-00286-MKD, which is set for a Scheduling Conference on October 21, 2024, at 1:30 p.m.) For these reasons,

² "'Viewings'" are time-consuming, difficult to record, and present a risk the jury may see or hear something improper. As a result, courts are often reluctant to order a view *unless convinced* it is crucial to the moving party's case." E. Jury Views, Rutter Group Prac. Guide Fed. Civ. Trials & Ev. Ch. 8C-E (italics in original).

1 and for the reasons set forth in the City's original moving papers, the City
2 respectfully renews its request for the Court to grant this Motion.

3 Because the outcome of this Motion does not depend on (or relate to)
4 whether the police shooting was justified, the City declines to engage in a
5 rebuttal of the representations made by Plaintiffs in their Response regarding
6 the shooting. That will be coming soon enough in the form of Defendants'
7 summary judgment motion.

8
9 DATED: October 2, 2024

10
11 KEATING, BUCKLIN & McCORMACK, INC., P.S.

12
13 By: /s/ Brian C. Augenthaler

14 Brian C. Augenthaler, WSBA #44022

15 Stewart A. Estes, WSBA # 15535

16 Brian C. Augenthaler, WSBA # 44022

17 Richard B. Jolley, WSBA # 23473

18 Attorneys for Defendants CITY OF SPOKANE,

19 TREVOR WALKER and CHRISTOPHER JOHNSON

20 801 Second Avenue, Suite 1210

21 Seattle, WA 98104-1518

22 Phone: (206) 623-8861

23 Fax: (206) 223-9423

24 Email: baugenthaler@kbmlawyers.com

DEFENDANT CITY OF SPOKANE'S REPLY TO
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FAX: (206) 223-9423

CERTIFICATE OF SERVICE

I hereby certify that on October 2, 2024, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Attorneys for Plaintiffs

Rondi J. Thorp, WSBA # 32872
David E. Turplesmith, WSBA # 32873
Jodi D. Thorp, WSBA # 59749
Meyer Thorp Attorneys at Law, PLLC
P.O. Box 87
Spokane, WA 99210
Tel: 509-533-1511
Fax: 509-343-3366
Email: rondi@meyerthorp.com
david@meyerthorp.com
jodi@cjtrlaw.com
mistina@meyerthorp.com
ashlyn@cjtrlaw.com

DATED: October 2, 2024

/s/ Lindsey E. Martin
Lindsey Martin, Legal Assistant

DEFENDANT CITY OF SPOKANE'S REPLY TO
PLAINTIFFS' OPPOSITION TO DEFENDANT'S
MOTION TO RELEASE VAN TO OWNER - 5
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